IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:02-08-2006

Coram:

The Honourable Mr. Justice Elipe Dharma Rao

W.P. No.21518 of 2000
W.P.M.P.Nos.31288 of 2000,2195 and 11320/0 4and 35602/05

1.M. George RaviShekeran
2.M. Giri
3.K.G. Sethuraman
4.P.K. Suresh Babu
5.P. Shafi Wulla Khan
6.P. Ramachandra
7.M.K.V.V. Rajasekara Rao
8.Promod Kumar Swain
9.P.N.M. Ramesh Babu
10.Rajesh Rajagopalan
11.M. Charles Guna Sekharan
12.G.S. Sudakhar Raju
13.S.V. Prasad
14.T. Malhotra
15.N. Varaprasada Rao
16.B.K. Sankara Narayana Kutty
17.R. Murthy
18.Debashish Kundu
19.G. Sridhar
20.R.K. Krishnakumar
21.R. Keethiverman
22.V. Arvind Razario
23.N.R. Williams
24.M. Ulaganathan
25.K.V.S.S.V. Jaganadha Rao
26.Ivan Hoe Moses Taylor
27.N.G. Ajithan
28.C. Venkatesh
29.A. Jayasankar
30.V.T. Sivakumar
31.V. Sivakumar
32.S. Shanmugam
33.B. Robert Vidya Sagar
34.A.L.Zafferullah
35.R. Saravanan
36.Nihar Rajan Sahoo
37.C.P. Sekharan

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

38.Ebinezer Suresh
39.M. Shyam Sunder
40.M. Senthil Kumar
41.Moses Gunasekaran
42.Amith Ranjan
43.Umanath Prasad Guptha
44.S.K. Diwakar Babu
45.S. Dilli Baskar
46.R. Sridhar
47.V.S. Janardhanan
48.D. Mahesan
49.A. Khader Basha
50.A. Thenkumaran
51.Easow Chacko ... Petitioners

:versus:

1.Oil & Natural Gas Corporation
Limited, rep. by its Chairman cum
Managing Director
Jeevan Bharathi Building
Tower-II
Cannaught Place
New Delhi 110 001
2.Director (Personnel)
Oil & Natural Gas Corporation Ltd.
Jeevan Bharathi Building
Tower-II
Cannaught Place
New Delhi 110 001
3.Regional Director
Southern Regional Business Center
Oil & Natural Gas Corporation Ltd.
CMDA Building, Gandhi-Irwin Road
Egmore, Chennai 600 008
4.General Manager - P&A
Southern Regional Business Center
Oil & Natural Gas Corporation Ltd.
CMDA Building, Gandhi-Irwin Road
Egmore, Chennai 600 008
5.Group General Manager (P)
Oil & Natural Gas Corporation Ltd.
Krishna Godhavari Project
Jetty Towers
Danvaipeta
Rajahmundry 533 103

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

6.Group General Manager (P)
Oil & Natural Gas Corporation Ltd.
Cauvery Project
Neravy, Kraikal .... Respondents

Petition under Art.226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondent corporation to absorb the petitioners as Marine Assistant Radio Operators, with effect from 8-9-1994 on the basis of the abolition of contract labour and as per the recommendations dated 4-6-1999 of the Ministry of Petroleum and Natural Gas, Government of India, to the first respondent and the approval of the competent authority as communicated in the fax dated 23-9-1999 to the third and fourth respondents with all monetary benefits and all other attendant benefits.

For Petitioners :: Mr. S. Narayanamurthy
For Respondents :: Mr. G. Masilamani
Senior Counsel for
Mr. T. Rathinathurai for
R3 and R4
No appearance for R1, R2,
R5 and R6

ORDER

This writ petition was filed seeking the relief of Writ of Mandamus, directing the respondent corporation to absorb the petitioners as Marine Assistant Radio Operators, with effect from 8-9-1994 on the basis of the abolition of contract labour and as per the recommendations dated 4-6-1999 of the Ministry of Petroleum and Natural Gas, Government of India, to the first respondent and the approval of the competent authority as communicated in the fax dated 23-9-1999 to the third and fourth respondents with all monetary benefits and all other attendant benefits.

2. Petitioners are working with the respondent corporation. Petitioners claim that they should be absorbed as Marine Assistant Radio Operators with effect from 8-9-1994 on the basis of the letter dated 4-6-1999 issued by the Joint Secretary, Ministry of Petroleum and Natural Gas, Government of India and the fax message dated 23-9-1999 issued by the General Manager (P&A) R.P. Tel Bhavan, Dehradun and to give all consequential benefits.

3. Petitioners submit that the respondent corporation have on their rolls regular Marine Assistant Radio Officers, Marine Radio Operators, Marine Radio Officers, Senior Marine Radio Officers and such employees are regular employees of the respondent corporation. Petitioners further submit that the respondent corporation instead of appointing the Radio Operators directly resorted to a system of engaging them through contractors and the qualification and experience of the Radio Operators so

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

engaged were no less than the regular Marine Assistant Radio Operators. Petitioners further state that in the letter dated 28-9-1989 addressed by the respondent corporation to one of its contractors, it was stated that they would interview the Radio Operators and those Radio Operators who were selected by the corporation only will be deployed by the contractor to work in the corporation establishment. Petitioners further state that even in terms of work, they were being relieved by the directly appointed Radio Operators side by side along with the regular Marine Radio Operators of the corporation and that though their qualification was same and were doing the same work, there was a vast difference of salary between the petitioners and the workers who were directly appointed by the corporation. Petitioners also submit that the provisional seniority list issued by the corporation in the year 1986 would show that they were no less qualified than the regular Marine Radio Operators of the corporation and at the time of their appointment on contract, they were hardly getting Rs.1700/- approximately whereas the regular Marine Radio Operators were paid a salary of Rs.7000/- approximately.

4. Petitioners further submit that they filed a writ petition, W.P. No.15211 of 1991, before this Court seeking a direction to the respondent corporation to treat them as regular Radio Operators and to pay them the scale of pay and benefits. Petitioners submit that the said writ petition was allowed by this Court pursuant to the notification dated 8-9-1994 issued by the Central Government abolishing the contract labour system and the judgment of the Supreme Court in Air India Statutory Corporation Ltd. v. United Labour Union and others (1997[9] SCC 377). The writ appeal filed by the corporation was also dismissed by a Division Bench of this Court. Petitioners further submit that the respondent corporation filed a Special Leave Petition before the Supreme Court against the judgment of the Division Bench of this Court, but the Supreme Court in view of the undertaking given by the learned Additional Solicitor General to the effect that all qualified employees at the relevant time would be considered for absorption as contemplated by the judgment of the Supreme Court in Air India Statutory Corporation case, disposed of the Special Leave Petition, recording the undertaking given by the Additional Solicitor General.

5. Petitioners submit that the respondent corporation called for the bio-data of all the petitioners. Petitioners submit that they should have been regularised as Marine Assistant Radio Operators and consequently the pay should have been fixed as Rs.2,802/- old basic in the scale top of Class III. Instead, the respondent corporation deliberately regularised the petitioners as Junior Helpers and fixed the pay as Rs.2,282/- old basic bottom of Class IV. The designation given to the petitioners is seven steps below in the unskilled cadre of employees. The petitioners filed a contempt application, C.A. No.367 of 1997 and the Petroleum Employees Union had also filed a contempt application before the Supreme Court for disobedience of the order passed in S.L.P. No.21146 of 1997, but the said contempt applications were withdrawn reserving the liberty to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

approach the High Court for appropriate orders.

6. Petitioners submit that they have pursued the matter with the Ministry of Petroleum and Natural Gas to give proper grade of scale as Marine Assistant Radio Operator and the Ministry appointed a fact-finding Committee to go into the alleged injustice done to the petitioners in the matter of regularisation. The said committee submitted its' report recommending that the petitioners should be absorbed by the respondent corporation in the post of Marine Assistant Radio Operators with effect from 8-9-1994, the date on which the contract labour system was abolished in the respondent corporation. On the basis of the said report, the Ministry of Petroleum issued a letter dated 4-6-1999 directing the first respondent to regularise all those Radio Operators who were having certificate of proficiency as prescribed in R&P Regulations, 1980 with effect from 8-9-1980 in the post of Marine Assistant Radio Operator.

7. Petitioners submit that they have been making repeated representations to the respondent corporation to absorb them in the post of Marine Assistant Radio Operators with effect from 8-9-1994, but no steps were taken so far by the respondent corporation. Aggrieved, the petitioners have filed the above writ petition.

8. The respondent corporation, in their counter-affidavit, denied the claim of the petitioners and submitted that the writ petition is liable to be dismissed on the principle of res judicata and also for suppression of material facts. The dispute between the parties was referred to the Labour Tribunal at Chennai by the Government of India, but it resulted in a failure report and the subsequent case in I.D. No.88 of 1997 also resulted in no award.

9. It is further submitted that the petitioners were absorbed as Junior Helpers with effect from 29-1-1997 and such absorption was communicated to the petitioners on 2-4-1998. The petitioner accepted the absorption as Junior Helpers without any protest and since then enjoying the benefits as Junior Helper and hence they are estopped from maintaining the writ petition. Further, during the pendency of the writ petition, the petitioners were promoted as Helper Grade-III with effect from 1-1-2001. Petitioners have not challenged the order dated 2-4-1998 absorbing them as Junior Helper and, therefore, the said order had become final.

10. It is further submitted that the recruitment into the services of the respondent corporation is governed by its Recruitment and Promotion Rules of the respondent corporation which provides inter alia that all such recruitment should be made as per the required qualification prescribed therein and more particularly only by calling for a list of eligible candidates from the employment exchange. The petitioners do not meet the mandatory requirements and qualifications under the said rules. The petitioners have no qualification, experience and capacity to work in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

offshore operations, which service is an integral part of service of Assistant Radio Operators. Further, the rules have been amended with effect from 1-1-1997 whereunder there is no category of Marine Assistant Radio Operator.

11. It is further submitted that there was no requirement of Marine Assistant Radio Officers in S.R.B.C. Or other region of the respondent corporation as there are no adequate off-shore operations. Further, on account of the upgraded technology, there is also no necessity for the service of a Radio Operator as with the present system, the user themselves can operate the system without the assistance of any operator. Though the service of Junior Helper was not at all required, the respondent corporation absorbed the petitioners only in obedience to the orders of this Court. Further, there is a ban imposed by the Central Government on the creation of Group B,C and D posts. If the petitioners are absorbed as Marine Assistant Radio Officers without the required qualification, it would lead to wider ramification in the respondent corporation as the respondent corporation has regularised the services of several such workmen in compliance with the orders passed by various courts at the induction level in different regions.

12. The respondent corporation denied the claim of the petitioners that the regular Marine Assistant Radio Operators, Marine Radio Operators, Marine Radio Officers, Senior Marine Radio Officers on their rolls have the same qualification as that of the petitioners. It is submitted that temporary engagement of employees through the contractors was resorted only due to the exigency of the work and such engagement was made not against any regular vacancy.

13. The respondent corporation further submitted that the personnel of the contractors were only verified with respect to the testimonials as furnished by the contractor. The contractors submitted the list of persons and until then there was no transaction between the petitioners and the respondent corporation. Petitioners were engaged only for the work at on-shore drilling sites and installations and not for the off-shore operations whereas the Marine Assistant Radio Operators were to work on off-shore as well as on-shore drilling sites. Therefore, it is incorrect to state that the petitioners were being relieved by the directly appointed Radio Operators side by side along with the regular Marine Radio Operators of the respondent corporation. The respondent corporation also denied the petitioners' claim of vast difference in the salary between them and the directly appointed employees. The petitioners were never employed as Marine Assistant Radio Operators. The petitioners cannot be equated with that of the personnel who possess the required qualification and who have been appointed directly in accordance with the relevant recruitment rules of the respondent corporation. The employees of the respondent corporation are liable to be transferred to any region.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

14. Heard the learned counsel for the petitioner and the learned senior counsel for the respondent corporation and perused the entire material placed on record.

15. The respondent corporation is having its oil and natural gas exploration and exploitation sites, both on-shore and off-shore, at various places all over the country. The respondent corporation was having in its employment the regular posts of Marine Assistant Radio Operators, Marine Radio Operators, Marine Radio Officers, Senior Marine Radio Officers for manning the radio network and communication equipment at Drill sites. Apart from this, the respondent corporation was also engaging the services of "Radio Operators", as contract labour, through certain private independent contractors.

16. Petitioners herein were initially engaged by the respondent corporation to work as Radio Operators in the Cauvery and Krishna-Godhavari Project through private contractors from 1986 onwards. The Central Government issued a notification dated 8-9-1994, in exercise of the powers conferred under Sec.10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting employment of contract labour in various works, which included the work of Radio Operators also, in the establishment of the respondent corporation.

17. The petitioners filed writ petitions, W.P. No.15211 of 1991 and 1178 of 1996, before this Court for directing the respondent Corporation to treat them on par with regular "Marine Assistant Radio Operators" working in the respondent corporation and to pay the scale of pay and other benefits as given to the Marine Assistant Radio Operators, on the ground that their qualification and experience are no less than the Marine Assistant Radio Operators and further the nature of work was also the same. The said writ petitions were allowed by the learned single in view of the notification dated 8-9-1994 issued by the Central Government and also in the light of the judgment of the Supreme Court in Air India Statutory Corportion Limited case, cited supra. The judgments of the learned single Judge were also upheld by the Division Bench of this court vide order dated 15-7-1997 in W.A. Nos.389 and 398 of 1997.

18. Challenging the order passed by the Division Bench of this Court in W.A. Nos.389 and 398 of 1997, the respondent corporation filed a Special Leave Petition before the Supreme Court challenging the order passed by the Division Bench. The said Special Leave Petition was, however, disposed of recording the statement made by Mr. V.R. Reddy, Additional Solicitor General appearing for the respondent corporation that those workmen who are found to be qualified in terms of the appropriate regulations as in force at the relevant time shall be absorbed as contemplated by the judgment in Air India Statutory Corporation Limited case.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

19. Thereafter, the respondent corporation absorbed the petitioners as "Junior Helpers" and fixed their pay as Rs.2282/- old basic bottom of Class IV employees of the respondent corporation. Aggrieved by the act of the respondent corporation in absorbing them as "Junior Helper" with the pay of Rs.2282/- old basic bottom of Class IV cadre, the petitioners filed a contempt application before the Supreme Court, but withdrew the same with liberty to move the High Court for appropriate relief.

20. In the mean time, the petitioners were also pursuing the matter with the Ministry of Petroleum and Natural Gas. The Ministry appointed an one-man committee to go into the grievance of the petitioners. The Committee after a thorough exercise, submitted its detailed report recommending that the petitioners should be absorbed in the post of Marine Assistant Radio Operator with effect from 8-9-1994 in the then prevailing pay scale of Rs.595-20-755-25-930-1140. Petitioners were also making repeated representations to the respondent corporation to implement the recommendations of the Committee, but the respondent corporation has not so far implemented the recommendations of the Committee.

21. In short, the grievance of the petitioners is that in the light of the recommendations made by the committee and the Ministry and also in view of the judgment of the Supreme Court in Air India Statutory Corporation Act, they are entitled to be absorbed as "Marine Assistant Radio Operators" at the top of Class III cadre with effect from 8-9-1994, but the respondent corporation absorbed and regularised them as "Junior Helpers" with the pay as Rs.2282/- old basic bottom of Class IV, which is seven steps below in the unskilled cadre of employees of the respondent corporation. According to the petitioners, the absorption was in complete breach of the undertaking given by the respondent corporation, through the Additional Solicitor General, before the Supreme Court and against the judgment of the Supreme Court in Air India Statutory Corporation Case.

22. Before proceeding further, it is pertinent to note the order dated 12-1-1998 passed by the Supreme Court disposing of the Special Leave Petition filed by the respondent corporation against the judgment dated 15-7-1997 of the Division Bench of this Court. The order reads as follows:

> "Mr. V.R. Reddy, learned Additional Solicitor General appearing on behalf of the petitioner states that <u>those of the 56 workmen who are found to be qualified in terms of the appropriate regulations, as in force at the relevant time, shall be absorbed as contemplated by the judgment in Air India Statutory Corporation & ors. vs. United Labour Union & Ors. 1997 (7) SCC 377.</u> In view of this statement the SLP does not survive and is disposed of."

A close reading of the above order shows that the Additional Solicitor General made a statement, which was in the nature of an undertaking on behalf of the respondent corporation, that the absorption of the qualified petitioners would be done as contemplated under the regulations and by the judgment of the Supreme Court in Air India Statutory Corporation Case.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

23. Therefore, the issue is further narrowed down to determine whether the absorption of the petitioners by the respondent corporation was in the true sprit of the judgment of the Supreme Court in Air India Statutory Corporation case, cited supra, as the whole exercise of absorption by the respondent corporation was based on the said judgment. It is therefore, necessary to have a deeper analysis of the judgment of the Apex Court in Air India Statutory Corporation case, cited supra.

24. In Air India Statutory Corporation case, cited supra, the appellants engaged, as contract labour, the members of the respondent union for sweeping, cleaning, dusting and watching of the building owned and occupied by the appellant. Since the appellant corporation did not abolish the contract labour system and failed to enforce the notification of the Government of India dated 9-12-1976, the respondents-workmen filed writ petitions for direction to the appellant to enforce forthwith the said notification abolishing the contract labour system in the aforesaid services and to direct the appellant to absorb all the employees doing cleaning, sweeping, dusting, washing and watching of the buildings owned or occupied by the appellant-establishment. The unsuccessful appellant corporation before the learned single Judge and the Division Bench, filed a Special Leave Petition before the Supreme Court challenging the order passed by the Division Bench. Dismissing the appeal, the Supreme Court observed that on abolition of the contract labour, the principal employer is under statutory obligation to absorb the contract labour and regularise them as permanent workmen of the corporation. The Supreme Court also repelled the contention of the corporation that there was no specific post with scale of pay available in the corporation to accommodate the workmen and directed that though there exists no specific scale of pay to be paid as regular employees, it is for the establishment to take such steps as are necessary to prescribe scale of pay like Class D employees.

25. Therefore, it is evident that when an objection was raised by the principal employer that there was no specific post or pay scale available in the establishment to absorb the contract labourers who were doing the menial works such as dusting, washing, cleaning, watching, etc., the Supreme Court, taking into consideration the nature of duties performed by the contract labourers, directed the principal employer to absorb them as Class D employees and to pay them the scale of pay applicable to the Class D employees. The Supreme Court has not stated any law that on abolition of contract labour, the absorption should necessarily be made only at the lowest cadre and/or with the lowest scale of pay. That is not the true import of the said judgment. The relevant observations of the Supreme Court are found in paragraph 47 of the judgment, which read as follows:

> "It is true that learned counsel for the appellant had given alternative proposal, but after going through its contents, we are of the view that the proposal would defeat, more often than not, the purpose of the Act and keep the workmen at the whim of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the establishment. The request of the learned Solicitor General that the management may be left with that discretion so as to absorb the workman in the best manner favourable to the workmen cannot be accepted. In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, the linkage between the contractor and the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. Though there exists no specific scale of pay to be paid as regular employees, it is for the establishment to take such steps as are necessary to prescribe scale of pay like class 'D' employees. There is no impediment in the way of the appellants to absorb them in the last grade, namely, grade IV employees on regular basis. It is seen that the criteria to abolish the contract labour system is the duration of the work, the number of employees working on the job, etc. That would be the indicia to absorb the employees on regular basis in the respective services in the establishments.

26. In the present case, the petitioners were engaged as contract labourers to discharge the duties of Radio Operators. It is also seen from the records that the respondent corporation was having in its employment various cadres of Radio Operators. Therefore, when the respondent corporation gave an undertaking before the Supreme Court that those of the 56 workmen who are found to be qualified in terms of the appropriate regulations shall be absorbed as contemplated by the judgment in Air India Statutory Corporation case, the respondent corporation should have been absorbed them in the appropriate cadre by taking into consideration their qualification, experience and the nature of duties performed by them, at least at the induction or lower level of the said cadre.

27. That apart, even as per the amended R&P Regulations, 1980, the respondent corporation was having on its employment a specified category of Marine Assistant Radio Operator which carried a specific scale of pay. According to the said regulations, the induction level under Marine discipline is in the pay scale of Rs.2802 (Top of Class III). Therefore, the contention of the respondent-corporation that the amended R&P Regulations did not provide for the post of Radio Operator is factually incorrect for the simple reason that both the one-man committee and the Central Government have recommended for the absorption of the petitioners as Marine Assistant Radio Operators. As per the judgment in Air India case, prescription of scale of pay would arise only if it does not exist. In the present case admittedly the various posts of Marine Radio Operators do exist in the employment of the respondent corporation. The action of the respondent-corporation in absorbing the petitioners in the category of Junior Helper in Grade IV, which is the lowest cadre in the respondent organisation, is not in accordance with the judgment of the Air India case.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

28. On a careful analysis of the judgment of the Supreme Court, it is evident that the true import of the said judgment is that the exercise of absorption should be made in the real sense by taking into consideration the qualification, experience and the nature of work done by the contract labourers and such contract labourers should be absorbed and fitted against the suitable posts or cadre which are available in the employment of the principal employer at the time of absorption. From the materials made available on record, it is seen that the petitioners are doing the work of Radio Operators though they were absorbed as Junior Helpers in the lowest cadre of the respondent corporation. Therefore, when the post of Radio Operators is very much available, the respondent corporation should have absorbed them in the cadre with the respective scale of pay attached to the said post. Absorption, in strict compliance of the judgment of the Supreme Court in Air India Statutory Corporation case, means absorption in real sense and not a camouflage just to defeat the legitimate rights of the contract labourers. In the facts and circumstances of the present case, it is obvious the respondent corporation has adopted the dubious method of absorption to deprive the rightful claims of the petitioners and at the same time to claim that they have honoured the undertaking given before the Supreme Court.

29. It is also seen from the materials placed on records that the petitioners were also pursuing their case with the Ministry of Petroleum and Natural Gas. On the representations made by the petitioners, the Ministry had appointed a one-man committee to go into the grievance of the petitioners in the matter of their absorption. The committee after a detailed study of the matter, submitted its recommendation. The report of the committee is more eloquent on the subject. The recommendations made by the committee is found in paragraph 6 of the report, which reads as follows:

> "Having regard to the facts and analysis of the case as brought out in the foregoing paragraph it is my considered view that ONGC is bound to absorb all the Radio Operators who were having the the Certificate of Proficiency as prescribed in the R&P Regulations 1980 with effect from 8-9-1994, the date of prohibition of employment of contract labour in the category of Radio Operator, R&P Regulations 1980 is the appropriate regulation to decide about the category and scale in which they should be absorbed because these were the contract employment. Accordingly, it is recommended that all the employees may be absorbed by ONGC in the post of Marine Assistant Radio Operator with effect from 8-9-1994 in the Pay Scale corresponding to Rs.595-20-755-25-930-30-1140 as applicable on 8-9-1994."

Acting on the report submitted by the committee, the Ministry of Petroleum and Natural Gas, by their letter dated 4-6-1999 also recommended that all the Radio Operators who were having the certificate of proficiency, as prescribed in the R&P Regulations, 1980 with effect from 8-9-1994 may be absorbed by the ONGC in the post of Marine Assistant Radio Operator in the pay scale corresponding to Rs.595-20-755-25-930-30-1140 as

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

applicable on 8-9-1994. The respondent corporation, however, failed to give effect to this recommendation also.

30. Learned senior counsel for the respondent corporation argued that since the petitioners accepted in writing their absorption and appointment as Junior Helpers, joined the services of the respondent corporation as Junior Helpers and further during the pendency of the writ petition, they have also been promoted as Helper Grade-III, which the petitioners have accepted without any demur, they are estopped from claiming that they should be absorbed as Assistant Marine Radio Operators. The contention of the learned senior counsel is factually incorrect. It is seen from the letter dated 18-5-1998 written by the Petroleum Employees Union to the respondent corporation that the petitioners accepted the offer only with protest. It is to be borne in mind the position in which the parties were placed and in the facts and circumstances of the case that by accepting the absorption as was given by the respondent corporation, it cannot be said that the petitioners have either surrendered or waived their legitimate rights flowing from the statute in question and the judgment of the Supreme Court in Air India Statutory Corporation case, cited supra. When the petitioners claim that their absorption was not in accordance with the judgment of the Supreme Court, the respondents' hyper-technical defences such as laches, res judicata, estoppel, maintainability, etc. should not come in the way of granting relief to the petitioners when once it is found that the exercise of absorption was not fair and proper. The argument of the learned senior counsel on these grounds are, therefore, do not impress me to entertain the same.

31. It was also argued by the learned senior counsel that the petitioners' have no legal right to seek the enforcement of the letter dated 4-6-1999 written by the Ministry of Petroleum and Natural Gas recommending the petitioners' claim for absorption as Assistant Marine Radio Operators and the report of the one-man committee. It may be so, but in the present case the core issue is whether the respondent corporation had honoured their undertaking given before the Supreme Court in true sprit of the judgment of the Supreme Court in Air India Statutory Corporation & ors. I have already held that the respondent corporation had adopted the dubious method of absorption just to deprive the legitimate rights of the petitioners and that the exercise of absorption was a camouflage. The respondents have not produced any material to the satisfaction of the Court to show that they have sincerely considered the cases of the qualified petitioners for absorption as Marine Assistant Radio Operators in terms of the undertaking given by them before the Supreme Court that those of the 56 workmen who are found to be qualified in terms of the appropriate regulations, as in force at the relevant time, shall be absorbed as contemplated by the judgment in Air India Statutory Corporation.

32. Therefore, considering the entire facts and circumstances of the case in the light of the report of the committee, recommendation made by

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the Ministry of Petroleum and Natural Gas and the judgment of the Supreme Court in Air India Statutory Corporation case, cited supra, I am of the considered view that the absorption of the petitioners by the respondent corporation as Junior Helpers with the pay of Rs.2282/- old basic bottom of Class IV cadre was not fair and proper and certainly not in strict compliance of the undertaking given by the respondent corporation before the Supreme Court. On the other hand, I am of the considered view that the petitioners are entitled to be absorbed as Marine Assistant Radio Operators.

33. In the result, the writ petition is allowed as prayed for. The respondents are directed to absorb the petitioners as Marine Assistant Radio Operators with effect from 8-9-1994 on the basis of the abolition of contract labour and as per the recommendations dated 4-6-1999 of the Ministry of Petroleum and Natural Gas, Government of India, to the first respondent and the approval of the competent authority as communicated in the fax dated 23-9-1999 to the third and fourth respondents with all monetary benefits and all other attendant benefits. If for any reason, there is no cadre of Marine Assistant Radio Operator or there are no sufficient posts are available in the cadre of Marine Assistant Radio Operators to accommodate all the petitioners, the respondents are directed to give "pay protection" to the petitioners and sanction them the scale of pay as applicable to the Marine Assistant Radio Operators as recommended by the Ministry of Petroleum and Natural Gas.

34. In the result, the writ petition succeeds and accordingly it is allowed. No costs. Connected WPMPs are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Jai

To:
1.The Managing Director,
Oil & Natural Gas Corporation
Limited,
Jeevan Bharathi Building
Tower-II
Cannaught Place
New Delhi 110 001.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.Director (Personnel)
Oil & Natural Gas Corporation Ltd.
Jeevan Bharathi Building
Tower-II
Cannaught Place
New Delhi 110 001

3.Regional Director
Southern Regional Business Center
Oil & Natural Gas Corporation Ltd.
CMDA Building, Gandhi-Irwin Road
Egmore, Chennai 600 008

4.General Manager - P&A
Southern Regional Business Center
Oil & Natural Gas Corporation Ltd.
CMDA Building, Gandhi-Irwin Road
Egmore, Chennai 600 008

5.Group General Manager (P)
Oil & Natural Gas Corporation Ltd.
Krishna Godhavari Project
Jetty Towers
Danvaipeta
Rajahmundry 533 103

6.Group General Manager (P)
Oil & Natural Gas Corporation Ltd.
Cauvery Project
Neravy, Kraikal

+ 1 CC To Ms.Vijaya Dharani, Advocate SR NO.34490

+ 1 CC To Mr. P.Rathina Durai, Advocate SR NO.3347

W.P. No.21518 of 2000
02-08-2006

tej(co)
gp/4.8.

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/